

Appln. No. 09/445,223
Amdt. dated April 23, 2007
Reply to Office action of April 21, 2006

REMARKS

The Office Action has been carefully reviewed. No claim is allowed. Claims 5-7, 11, 23, 44-48, 54 and 55 presently appear in this application and define patentable subject matter warranting their allowance. Reconsideration and allowance are hereby respectfully solicited.

The present amendment should be entered, even after the filing of a Notice of Appeal, because:

1) The Office Action Summary indicates that the instant Office Action is both final and nonfinal, which of course is erroneous and confusing (Applicants' clerical staff was confused by the indication and docketed the Office Action as a final Office Action and applicants thus proceeded to file a Notice of Appeal in reliance of the erroneous and confusing indication by the PTO).

2) The examiner also would have entered the present amendment as a matter of right following a nonfinal Office Action.

3) Applicants are making a bona fide attempt to place the application in condition for allowance by accepting what the examiner appears to suggest would obviate the rejections.

4) The amendments also place the claims in better condition for appeal.

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The reasons above were discussed with the examiner on April 23, 2007, and the examiner agreed to enter this amendment.

A copy of the paper sequence listing filed December 6, 1999, is attached hereto, to replace the paper copy that is not readable after scanning at the PTO. I hereby state that this paper copy sequence listing is the same as the paper copy sequence listing filed December 6, 1999, and is the same as the computer readable form also filed December 6, 1999.

The examiner notes that no marked up copy of the substitute specification filed February 28, 2002, is found and requires applicants to submit a marked-up copy of the substitute specification. This requirement is traversed.

The examiner's attention is respectfully invited to page 9 of the amendment filed February 28, 2002, where it states that:

No marked-up copy of the specification is being provided as applicants do not know which words have been obliterated. The undersigned hereby states that the attached substitute specification is identical in content to the specification as originally submitted. Since no changes are being made thereto, a marked-up copy is not necessary, nor is a statement that the substitute specification includes no new matter and includes the same changes that are indicated the marked-up copy.

Accordingly, no marked-up copy of the substitute specification is required.

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Reconsideration and withdrawal of this requirement is respectfully requested.

Claims 5-8, 11, 23, 44, 46-48 and 54-55 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. This rejection is obviated by the amendment to the claims to replace "potentiating cell death" with the recitation of "enhancing the level of cell death induced by FAS-R, p55 TNF-R or RIP" as appears to be suggested by the examiner at the bottom of page 7 of the Office Action.

Reconsideration and withdrawal of the rejection are therefore respectfully requested.

Claims 5-8, 11, 23, 24, 44, 46-48, 51 and 54-57 have been rejected under 35 U.S.C. §112, first paragraph, for lack of written description. This rejection is obviated by the amendments to the claims to cancel claims 8, 24, 51, 56 and 57 without prejudice to the refiling of a continuation application and to amend the claims to avoid the indefiniteness issue as discussed above by adopting the examiner's indication of adequately described analogs and fragments in the first full paragraphs on pages 9 and 11 of the Office Action, except that the language of "no more than ten changes in amino acid sequence" is still used instead of 98% sequence identity because this language finds direct

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support in the specification (and is equivalent to at least 98% sequence identity).

Reconsideration and withdrawal of the rejection are therefore respectfully requested.

Claims 5-8, 11, 23, 44, 46-48 and 54-55 have been rejected under 35 U.S.C. §112, first paragraph, for lack of enablement. The examiner states however that there is enablement for 1) a DNA sequence encoding SEQ ID NO:1, 2) a DNA sequence having 98% sequence identity with SEQ ID NO:1, wherein said DNA sequence encodes the amino acid sequence comprising amino acids 1-454, 244-540 or 315-540 of SEQ ID NO:1, and wherein said amino acid sequence enhances the level of cell death induced by FAS-R, p55 TNF-R or RIP, or 3) a DNA sequence consisting of a polynucleotide sequence encoding a polypeptide consisting of a fragment of SEQ ID NO:1, wherein said fragment comprises amino acids 1-454, 244-540 or 315-540 of SEQ ID NO:1.

This rejection is obviated by the cancellation of claim 8 and by the amendment to the claims to direct the claims to 1), 2) and 3) which are indicated as being enabled by the examiner.

Reconsideration and withdrawal of the rejection are therefore respectfully requested.

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Claims 24, 51 and 56-57 have been rejected under 35 U.S.C. §112, first paragraph, for lack of enablement. This rejection is obviated by the cancellation without prejudice of the rejected claims.

Reconsideration and withdrawal of the rejection are therefore respectfully requested.

In view of the above, the claims comply with 35 U.S.C. §112 and define patentable subject matter warranting their allowance. Favorable consideration and early allowance are earnestly urged.

Respectfully submitted,

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